

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

DONNA J. GARRETT, SPECIAL DEPUTY )  
RECEIVER OF LINCOLN MEMORIAL LIFE )  
INSURANCE COMPANY, MEMORIAL )  
SERVICE LIFE INSURANCE COMPANY, )  
AND NATIONAL PREARRANGED )  
SERVICES, INC., ET AL., )

Plaintiffs,

v.

J. DOUGLAS CASSITY; RANDALL K. )  
SUTTON; BRENT D. CASSITY; J. TYLER )  
CASSITY; RHONDA L. CASSITY; ET AL., )

Defendants. )

Case No. 09-CV-1252-ERW

**MOTION FOR RELIEF FROM ORDER  
OF APPOINTMENT AS COUNSEL AND/OR TO WITHDRAW**

COME NOW Movants Mark E. Goodman ("Goodman") and Capes, Sokol, Goodman & Sarachan, P.C. ("Capes Sokol") and hereby move for an order granting relief from the Court's Order dated November 2, 2009 (Doc. 163) appointing Goodman and Capes Sokol as counsel for Defendant Erin Province Engel ("Defendant Engel"). Alternatively, Goodman and Capes Sokol move for an order granting them leave of Court to withdraw as counsel for Defendant Engel. In support thereof, Movants state:

1. On or about August 5, 2009, Plaintiffs filed their Complaint with this Court ("Complaint").

2. The Complaint contains thirty (30) counts. Defendant Engel is named a Defendant in the Complaint as a result of alleged acts and conduct arising out of her employment as the Customer Service/Claims Manager for National Prearranged Services, Inc. ("NPS"). Complaint ¶ 47.

3. Defendant Engel is named as a Defendant as part of three (3) separate sets of group defendants, referred to in the Complaint as the RICO Defendants, the Fraudulent Transfer Defendants and the D&O Defendants. Complaint ¶¶ 86, 87, 90. A combined eighteen (18) counts are directed at the RICO Defendants, the Fraudulent Transfer Defendants and the D&O Defendants. Those counts are Counts 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 22, 26, 27 and 28, which respectively seek relief under the following theories: RICO, Conspiracy to Violate RICO, the Lanham Act, Fraudulent Omissions/Non-Disclosure, Fraudulent Misrepresentation, Conspiracy to Defraud, Aiding and Abetting Fraud, Negligent Misrepresentation and Omissions, Consumer Protection Act Violations, Texas Receivership Act Violations, Violation of Texas Insurance Code § 463.302, Fraudulent Transfer Act Violations, Breach of Fiduciary Duty, Gross Negligence, Aiding and Abetting Breach of Fiduciary Duty, Tortious Interference with Contract, Conversion and Unjust Enrichment.

4. The Complaint also names as a Defendant Randall J. Singer (“Singer”). Complaint ¶ 39. The Complaint alleges that, at various times, Defendant Singer served as President of Lincoln Memorial Life Insurance Company (“Lincoln”) and Memorial Service Life Insurance Company (“Memorial”) and as NPS’ Regional President for Missouri. *Id.*

5. Defendant Singer is also a constituent of the RICO Defendants, the Fraudulent Transfer Defendants and the D&O Defendants defendant groups, the same defendant groups of which Defendant Engel is a member. Therefore, Plaintiffs seek the same relief from both Engel and Singer based upon the same factual bases and legal theories.

6. In or about December, 2008 prior to the entry of the Court's Order dated November 2, 2009 appointing Goodman and Capes Sokol as counsel for Defendant Engel, Capes Sokol and Sanford J. Boxerman ("Boxerman") established an attorney-client relationship with Defendant Singer. Mr. Boxerman is a fellow shareholder with Mr. Goodman in Capes Sokol.

7. The nature and extent of Mr. Singer's engagement of Capes Sokol and Boxerman cannot be fully divulged without compromising matters protected from disclosure by the attorney-client privilege. However, without compromising the privilege the Movants can state that Mr. Boxerman has consulted with Mr. Singer in relation to this litigation. Capes Sokol and Mr. Boxerman's attorney-client relationship with Mr. Singer has not been terminated to date, rather, said representation is ongoing.

8. Missouri Supreme Court Rule 4-1.7(b) provides in part:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests unless:

(1) the lawyer reasonably believes the representation will not be adversely affected;

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Mo. Sup. Ct. R. 4-1.7.

9. Based upon Capes Sokol's and Boxerman's prior and continuing representation of Singer, Goodman and Capes Sokol have a conflict of interest which prevent them from accepting the appointment to represent Defendant Engel in this case.

10. In further support, Movants incorporate by reference their Memorandum in Support of this motion filed contemporaneously herewith.

WHEREFORE, Movants respectfully request that the Court grant them relief from the Court's Order dated November 2, 2009 (Doc. 163) appointing Goodman and Capes Sokol as counsel for Defendant Engel by setting aside said order and appointing new counsel to represent Defendant Engel, or, alternatively, that the Court grant Movants leave of Court to withdraw as counsel of record herein for Defendant Engel, and for such other and further relief as the Court deems to be just and proper in the circumstances.

CAPES, SOKOL, GOODMAN &  
SARACHAN, P.C.

By: /s/ Mark E. Goodman  
Mark E. Goodman #3248  
7701 Forsyth Boulevard, 12th Floor  
Saint Louis, Missouri 63105  
Telephone: (314) 721-7701  
Facsimile: (314) 721-0554  
[goodman@capessokol.com](mailto:goodman@capessokol.com)

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 10<sup>th</sup> day of November, 2009 the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Daniel M. Reilly  
[dreilly@rplaw.com](mailto:dreilly@rplaw.com)  
Larry S. Pozner  
[lpozner@rplaw.com](mailto:lpozner@rplaw.com)  
Clare S. Pennington  
[cpennington@rplaw.com](mailto:cpennington@rplaw.com)  
Wendy B. Fisher  
[wfisher@rplaw.com](mailto:wfisher@rplaw.com)  
Glenn E. Roper  
[geroper@rplaw.com](mailto:geroper@rplaw.com)  
Reilly Ponzer LLP  
511 16<sup>th</sup> Street, Suite 700  
Denver, Colorado 80202  
*Attorneys for Plaintiffs*

Jonathan F. Andres #73763  
[andres@stlouislaw.com](mailto:andres@stlouislaw.com)  
Green Jacobson P.C.  
7733 Forsyth Boulevard, Suite 700  
Clayton, Missouri 63105  
*Attorneys for Defendants*  
*Wulf and Wulf Bates & Murphy, Inc.*

E. Calvin Matthews IV #526775  
[ecm@gpslegal.com](mailto:ecm@gpslegal.com)  
Jim J. Shoemake #4357  
[jjs@gpslegal.com](mailto:jjs@gpslegal.com)  
Deborah J. Westling #3549  
[djw@gpslegal.com](mailto:djw@gpslegal.com)  
Eric M. Walter #107730  
[emw@gpslegal.com](mailto:emw@gpslegal.com)  
Guilfoil Petzall & Shoemake LLC  
100 S. Fourth Street, Suite 500  
St. Louis, Missouri 63102-1821  
*Attorneys for Defendant*  
*Randall K. Sutton*

Noel A. Sevastianos #49346  
[Noel@NoelsLaw.com](mailto:Noel@NoelsLaw.com)  
Sevastianos & Associates P.C.  
120 S. Central Ave., Suite 130  
St. Louis, Missouri 63105-1705  
*Attorneys for Defendants*  
*Forever Enterprises, Inc., Forever*  
*Network, Inc., Forever Illinois, Inc.,*  
*Texas Forever, Inc., Lincoln Memorial*  
*Services, Inc., National Heritage*  
*Enterprises, Inc., National Prearranged*  
*Services Agency, Inc., Legacy*  
*International Imports, Inc., and*  
*Brentwood Heritage Properties, LLC*

James M. Weiss  
[james.weiss@bryancave.com](mailto:james.weiss@bryancave.com)  
Bryan Cave LLP  
211 N. Broadway, Suite 3600  
St. Louis, Missouri 63102-2750  
*Attorneys for Defendant*  
*Bank of America, N.A.*

Sanford Goffstein #3227  
[sgoffstein@grlawstl.com](mailto:sgoffstein@grlawstl.com)  
Don R. Sherman #21491  
[dsherman@grlawstl.com](mailto:dsherman@grlawstl.com)  
Lori R. Koch #3584  
[lkoch@grlawstl.com](mailto:lkoch@grlawstl.com)  
Goffstein Raskas Pomerantz Kraus  
& Sherman LLC  
7701 Clayton Road  
St. Louis, Missouri 63117  
*Attorneys for Defendant*  
*Brown Smith Wallace LLC*

Steven H. Schwartz #4316  
[sschwartz@bjpc.com](mailto:sschwartz@bjpc.com)  
Brown and James P.C.  
1010 Market Street, 20th floor  
St. Louis, Missouri 63101  
*Attorneys for Defendants*  
*Howard A. Wittner, individually and*  
*as Trustee of the RBT Trust II and*  
*Wittner Spewak & Maylack P.C.*

Jeffrey T. Demerath #2963  
[jdemerath@armstrongteasdale.com](mailto:jdemerath@armstrongteasdale.com)  
Christopher R. LaRose #5220476  
[clarose@armstrongteasdale.com](mailto:clarose@armstrongteasdale.com)  
Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
*Attorneys for Defendants*  
*Southwest Bank and Marshall & Ilsley*  
*Trust Company, N.A.*

Richard E. Gottlieb, *pro hac vice*  
[rgottlieb@dykema.com](mailto:rgottlieb@dykema.com)  
Renee L. Zipprich, *pro hac vice*  
[rzipprich@dykema.com](mailto:rzipprich@dykema.com)  
10 South Wacker Drive, Suite 2300  
Chicago, Illinois 60606  
*Attorneys for Defendant*  
*Comerica Bank & Trust, N.A.*

Bogdan Rentea  
[brente@rentealaw.com](mailto:brente@rentealaw.com)  
Rentea & Associates  
1002 Rio Grande  
Austin, Texas 78701  
*Attorneys for Defendants Tony B.*  
*Lumpkin III and Lennie J. Cappleman*

David H. Luce  
[dhl@carmodymacdonald.com](mailto:dhl@carmodymacdonald.com)  
Carmody MacDonald P.C.  
120 S. Central Ave., Suite 1800  
St. Louis, Missouri 63105  
*Attorneys for Defendant*  
*Michael R. Butler*

Thomas Cummings #2910  
[tcummings@armstrongteasdale.com](mailto:tcummings@armstrongteasdale.com)  
Jonathan D. Valentino #538607  
[jvalentino@armstrongteasdale.com](mailto:jvalentino@armstrongteasdale.com)  
Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
*Attorneys for Defendant*  
*Bremen Bank and Trust Company*

David B. Cosgrove #162893  
[dcosgrove@cosgrovelawllc.com](mailto:dcosgrove@cosgrovelawllc.com)  
Kurt J. Schafers #532109  
[kschafers@cosgrovelawllc.com](mailto:kschafers@cosgrovelawllc.com)  
Cosgrove Law LLC  
1401 S. Brentwood Boulevard, Suite 560  
St. Louis, Missouri 63144  
*Attorneys for Defendant Anne Chrun*

Jay L. Kanzler Jr. #3516  
[jaykanzler@wklc.com](mailto:jaykanzler@wklc.com)  
Witzel Kanzler Kenney Dimmitt  
& Kanzler LLC  
2001 S. Big Bend Boulevard  
St. Louis, Missouri 63117  
*Attorneys for Defendant American Stock*  
*Transfer and Trust Company*

James W. George  
[jwgeorge@texas.net](mailto:jwgeorge@texas.net)  
Law Offices of James W. George  
901 South Mopac Expressway  
Barton Oaks Plaza One, Suite 300  
Austin, Texas 78746  
*Attorneys for Defendant Larry Keith Hale*

J. Christian Goeke #71795  
[jcgoeke@gabrielmail.com](mailto:jcgoeke@gabrielmail.com)  
Law Offices of J. Christian Goeke  
7711 Bonhomme Avenue, Suite 850  
Clayton, Missouri 63105  
*Attorneys for Defendant Kelly Tate*

Mike W. Bartolacci #29110  
[mbartolacci@thompsoncoburn.com](mailto:mbartolacci@thompsoncoburn.com)  
Christopher M. Hohn #62067  
[chohn@thompsoncoburn.com](mailto:chohn@thompsoncoburn.com)  
Thompson Coburn LLP  
One US Bank Plaza, Suite 26  
St. Louis, Missouri 63101  
*Attorneys for Defendant  
National City Bank*

Joseph L. Green  
[jgreen@leritzlaw.com](mailto:jgreen@leritzlaw.com)  
Leritz Plunkert & Bruning P.C.  
555 Washington Avenue, Suite 600  
St. Louis, Missouri 63101  
*Attorney for Defendant  
Nekol Province*

Joseph P. Whyte  
[jwhyte@whytelawfirm.com](mailto:jwhyte@whytelawfirm.com)  
The Whyte Law Firm  
P.O. Box 440236  
2025 S. Brentwood Blvd., Suite 102  
St. Louis, Missouri 63144-0236  
*Attorneys for Defendant  
Comerica Bank & Trust, N.A*

Burton H. Shostak #4359  
[bshostak@shostaklawfirm.com](mailto:bshostak@shostaklawfirm.com)  
Shostak & Shostak LLC  
8015 Forsyth Boulevard  
St. Louis, Missouri 63105  
*Attorneys for Defendant  
Randall K. Sutton*

Barry A. Short #4358  
[bshort@lewisrice.com](mailto:bshort@lewisrice.com)  
Evan Z. Reid, #93822  
[ereid@lewisrice.com](mailto:ereid@lewisrice.com)  
Carine M. Doyle  
[cdoyle@lewisrice.com](mailto:cdoyle@lewisrice.com)  
Lewis, Rice & Fingersh L.C.  
500 N. Broadway, Suite 2000  
St. Louis, Missouri 63102  
*Attorneys for Defendant Brent Cassity*

Cicely I. Lubben #118683  
[clubben@stinson.com](mailto:clubben@stinson.com)  
Sandra J. Wunderlich #33182  
[swunderlich@stinson.com](mailto:swunderlich@stinson.com)  
Stinson Morrison Hecker LLP  
168 N. Meramec Ave., Suite 400  
St. Louis, Missouri 63105  
*Attorneys for Defendant U.S. Bank, N.A.*

Adam Goffstein #72930  
[adam@goffsteinlaw.com](mailto:adam@goffsteinlaw.com)  
Adam M. Goffstein LLC  
7777 Bonhomme Avenue, Suite 1910  
St. Louis, Missouri 63105  
*Attorney for Defendant Scannell*

Steven M. Cohen #2848  
[scohen@bcbslaw.com](mailto:scohen@bcbslaw.com)  
Michael J. Sewell #513954  
Berger Cohen & Brandt L.C.  
8000 Maryland Ave., Suite 1550  
Clayton, Missouri 63105  
*Attorneys for Defendant  
Roxanne J. Schnieders (Sargent)*

Deirdre C. Gallagher #36043  
[dgallagher@spencerfane.com](mailto:dgallagher@spencerfane.com)  
Spencer Fane Britt & Browne LLP  
One N. Brentwood Blvd., Suite 1000  
St. Louis, Missouri 63105  
*Attorneys for Defendant J. Tyler Cassity  
and Hollywood Forever, Inc.*

The undersigned further certifies that a copy of the foregoing was sent via U.S. Mail, first class, postage prepaid, on this 10<sup>th</sup> day of November, 2009 to the following non-participants in Electronic Case Filing:

Erin Province a/k/a Erin Engle  
129 Asilomar Court  
Ballwin, Missouri 63105

George Wise III  
3001 Huron Club Court  
Austin, Texas 78738

James. M. Crawford  
418 Pine Bend Drive  
Chesterfield, Missouri 63005  
*Pro Se*

Randall J. Singer  
10833 Forest Circle Dr.  
Sappington, Missouri 63128  
*Pro Se*

Marianne Jones  
2309 W. New Hope Drive  
Cedar Park, Texas 78613  
*Pro Se*

American Stock Transfer and Trust Company  
c/o George Karfunkel, President  
59 Maiden Lane  
New York, New York 10038

Rhonda L. Cassity, Inc.  
a/k/a Wellstream, Inc.  
c/o Danielle E. deBenedictis  
deBenedictis Miller & Blum P.A.  
95 Commercial Wharf  
Boston, Massachusetts 02110

Seema Chawla (pro hac vice)  
Bryan Cave LLP  
3500 One Kansas City Place  
1200 Main Street  
Kansas City, Missouri 64105  
*Attorneys for Defendant Bank of America, N.A.*

Wise, Mitchell & Associates, Ltd.  
1250 Capital of Texas Hwy South  
Building 3, Suite 150  
Austin, Texas 78746

James M. Golden, *pro hac vice*  
10 South Wacker Drive, Suite 2300  
Chicago, Illinois 60606  
*Attorney for Defendant  
Comerica Bank & Trust, N.A.*

J. Douglas Cassity  
200 E. 61<sup>st</sup> St., Apt 37A, 37B, 37C  
New York, New York 10085-8556

Rhonda L. Cassity  
200 E. 61<sup>st</sup> St., Apt 37A, 37B, 37C  
New York, New York 10085-8556

J. Douglas Cassity  
4201 Gulf Shore Blvd N, Apt 1103  
Naples, Florida 34103-2251

Rhonda L. Cassity  
4201 Gulf Shore Blvd N, Apt 1103  
Naples, Florida 34103-2251

J. Douglas Cassity  
18 Cliff Road  
Nantucket, MA 01554-3644

Rhonda L. Cassity  
18 Cliff Road  
Nantucket, MA 01554-3644

/s/ Mark E. Goodman